

File

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)	
POPE & TALBOT, INC.,)	
)	
Appellant,)	PCHE No. 77-141
)	
v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION)	AND ORDER
CONTROL AGENCY,)	
)	
Respondent.)	

This matter, the appeal of eight \$250 civil penalties for smoke emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I, came on for hearing before the Pollution Control Hearings Board, W. A. Gissberg (Chairman and presiding) and Dave J. Mooney, convened at Tacoma, Washington on December 21, 1977. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant Pope & Talbot, Inc. appeared by and through its Resident Manager, Charles Peck. Respondent Puget Sound Air Pollution Control Agency appeared by and through its attorney, Keith D. McGoffin. Olympia

1 reporter Eugene E. Barker recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Hearings
8 Board a certified copy of its Regulation I containing respondent's
9 regulations and amendments thereto of which official notice is taken.

10 II

11 Appellant owns a lumber mill at Port Gamble, Kitsap County,
12 Washington. In times past, the appellant operated a bank of eight hog
13 fuel boilers at this mill. A hog fuel boiler utilizes wood waste as
14 fuel thereby disposing of that waste while producing heat to dry the
15 lumber products or steam to run the mill. These particular eight hog
16 fuel boilers were of an old design predating environmental concerns and
17 emitted considerable amounts of black smoke. With the advent of
18 respondent's air pollution regulations in 1971, appellant agreed to
19 convert from hog (waste wood) fuel to liquid petroleum gas which was
20 then available in unlimited amounts at a price of eleven cents per gallon.
21 By 1976, however, that price had tripled and the supply of gas became
22 undependable.

23 Consequently, appellant engaged the Northwest Pacific Corporation
24 to locate a modern hog fuel boiler system for the Port Gamble mill.
25 Northwest Pacific made its selection and, on appellant's behalf, filed
26 a "Notice of Construction" with respondent on April 14, 1976. The

27 FINAL FINDINGS OF FACT,
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1 hog fuel system thus filed included a smoke control device known as
2 a "dry scrubber" manufactured by Combustion Power Co., Inc., a
3 subsidiary of the Weyerhaeuser Company. The respondent approved the
4 "Notice of Construction" on June 18, 1976, but in doing so admonished
5 Northwest Pacific that the proposed dry scrubber appeared to be only
6 marginally capable of keeping emissions within respondent's standards.
7 This admonishment was not communicated to appellant by its agent,
8 Northwest Pacific.

9 III

10 A "baghouse" pollution control device would be more effective in
11 controlling emissions than the dry scrubber involved here. A baghouse
12 would, however, be more expensive to operate.

13 IV

14 In July, 1977, appellant's new hog fuel system was installed and
15 testing thereof begun prior to its acceptance by appellant. Smoke
16 emissions were observed to be much greater than those from hog fuel
17 boilers having the same dry scrubber but which use salt-free fuel. Hog
18 fuel, or waste wood, at appellant's coastal mill is primarily derived
19 from logs once stored in salt water. It is theorized that salt in the
20 fuel vaporizes and becomes a gas which is not effectively removed by
21 the dry scrubber and that salt deposits are formed within the scrubber
22 further decreasing its effectiveness.

23 In August, 1977, respondent issued three Notices of Violation--
24 without monetary penalties--to appellant. These declared that
25 emissions from the hog fuel boiler were in violation of Section 9.03(b),
26 the same Section alleged in this appeal. These August Notices of

1 Violation were not appealed.

2 Although appellant was thus apprised that its smoke emissions
3 were illegal, it consented to further testing of the hog fuel boiler
4 at the urging of the scrubber manufacturer, Combustion Power, who
5 contended that further testing would show that the scrubber could bring
6 emissions into control.

7 V

8 Appellant caused smoke emissions, from its hog fuel boiler, of
9 the following opacities, aggregating to the following minutes within
10 one hour, on the following dates:

11	<u>Date</u>	<u>Duration</u>	<u>Opacity</u>
12	1. September 7, 1977	12 minutes	50-60%
13	2. September 8, 1977	7 "	35-40%
14	3. September 12, 1977	9 "	35-50%
15	4. September 13, 1977	10 "	35-45%
16	5. September 15, 1977	11 "	60-100%
17	6. September 21, 1977	10 "	90-100%
18	7. September 22, 1977	10 "	100%
19	8. September 23, 1977	9 "	50-60%

20 The smoke remained suspended between the ground and treetop
21 level within the confines of the Port Gamble inlet. south of the mill.
22 Numerous residents along the inlet registered complaints with the
23 respondent.

24 Appellant subsequently received eight Notices and Orders of Civil
25 Penalty each in the amount of \$250 and each citing Section 9.03(b)
26 of respondent's Regulation I. The eight civil penalties imposed there-

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1 fore total \$2,000.

2 VI

3 Section 9.03(b) of respondent's Regulation I states as follows:

4 After July 1, 1975, it shall be unlawful for any person to
5 cause or allow the emission of any air contaminant for a period
6 or periods aggregating more than three (3) minutes in any one
7 hour, which is:

8 (1) Darker in shade than that designated as No. 1 (20%
9 density) on the Ringelmann Chart, as published by the United
10 States Bureau of Mines; or

11 (2) Of such opacity as to obscure an observer's view to
12 a degree equal to or greater than does smoke described in
13 Subsection 9.03(b)(1); provided that, 90.03(b)(2) shall not apply
14 to fuel burning equipment utilizing wood residue when the
15 particulate emission from such equipment is not greater than
16 0.05 grain per standard cubic foot.

17 Appellant has not ordered the removal of the dry scrubber because
18 its attorney has advised that such an act may prejudice appellant's
19 rights against the scrubber manufacturer in future litigation. The
20 scrubber manufacturer again urges "one last" test operation of the
21 hog fuel boiler and scrubber in the hope that such test will prove the
22 scrubber capable of controlling emissions.

23 VII

24 Any Conclusion of Law hereinafter stated which may be deemed a
25 Finding of Fact is hereby adopted as such.

26 From these Findings the Pollution Control Hearings Board comes
27 to these

28 CONCLUSIONS OF LAW

29 I

30 In emitting an air contaminant, smoke, for more than three minutes
31 in any one hour, which contaminant is of an opacity obscuring an
32 observer's view to a degree equal to or greater than does smoke

33 FINAL FINDINGS OF FACT,
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1 designated as No. 1 on the Ringelmann Chart, appellant violated
2 Section 9.03(b) of respondent's Regulation I, and did so on eight
3 distinct occasions.

4 While appellant admitted each violation, respondent nevertheless
5 proved a prima facie case with regard to each violation.

6 II

7 Appellant is desirous of controlling its smoke emissions but
8 has had misfortune in attempting to do so. Respondent's early warning
9 that the dry scrubber appeared to be a marginal control device was
10 communicated to appellant's agent who then did not inform appellant.
11 While the knowledge of an agent is, in law, attributed to the principal,
12 the appellant went forward with use of the dry scrubber without actual
13 knowledge of the respondent's warning.

14 While there have been repeated violations in this case, each was
15 part of an effort to solve the ineffectiveness of the dry scrubber
16 and bring emissions into control in the long run.

17 For these reasons, the maximum penalty here imposed for each
18 violation should be mitigated by affirmance outright of only one-half
19 of each penalty with suspension of the other half on condition that
20 appellant not incur any other violation of respondent's regulations
21 for one year from the date of appellant's receipt of this Order.
22 Further testing of the dry scrubber which results in a violation of the
23 respondent's regulations within this one year period will thus render
24 appellant liable for these suspended penalties which total \$1,000.

25 III

26 Any Finding of Fact which should be deemed a Conclusion of Law

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1 is hereby adopted as such.

2 Therefore, the Pollution Control Hearings Board issues this

3 ORDER

4 The eight \$250 civil penalties are each affirmed, provided however,
5 that one-half of each penalty is suspended on condition that appellant not
6 violate respondent's Regulations for a period of one year from the date of
7 appellant's receipt of this Order.

8 DONE at Lacey, Washington, this 29th day of December, 1977.

9 POLLUTION CONTROL HEARINGS BOARD

10 
11 W. A. GISSEERG, Chairman

12 
13 DAVE J. MOONEY, Member

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27 FINAL FINDINGS OF FACT,
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